



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Part 1552

EPA-HQ-OARM-2012-0196; FRL-9800-6

EPAAR Clause for Printing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: The Environmental Protection Agency (EPA) amends the EPA Acquisition Regulation (EPAAR) to update policy, procedures, and contract clauses. The final rule provides updates to outdated information previously in the EPAAR *Printing* clause.

DATES: This final rule is effective on [INSERT DATE of publication in the FEDERAL REGISTER].

ADDRESSES: *Docket:* All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov, or in hard copy at the Office of Environmental Information (OEI) Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1752. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays.

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SUPPLEMENTARY INFORMATION:

I. Background

In 2011 the EPA reviewed EPAAR clause 1552.208-70, *Printing*. Review was performed to reconsider the electronic reproduction threshold under which vendors may provide contract deliverables without violating mandatory printing source requirements. Reconsideration of the reproduction threshold was warranted given the ease with which electronic media may be reproduced. The clause is also being updated to clarify that EPA's Print Management Team is the processing office responsible for clause printing requirement waivers provided by the Joint Committee on Printing. Finally, the definition of non-paper copies that the contractor may provide has been expanded to include other types of portable electronic media in addition to compact discs. As such, the updates to the clause raise the limit for contractor-provided non-paper copies from 100 to 500, and clarifies that EPA's Print Management Team is the processing office responsible for clause printing requirement waivers. On October 4, 2012 (77 FR 60667) EPA sought comments on the proposed rule and received no comments.

II. Final Rule

This final rule amends the EPAAR to revise the following within the *Printing* clause:

1. Paragraph (d)(2) – changed from “the contracting officer must obtain a waiver from the U.S. Congress Joint Committee on Printing” to “Only the Joint Committee on Printing has the authority to grant waivers to the printing requirements. All Agency waiver requests must be coordinated with EPA's Headquarters Printing Management Team, Facilities and Services Division, and with

the Office of General Counsel.”

2. Paragraph (d)(3) – changed from “the contracting officer must obtain a waiver from the U.S. Congress Joint Committee on Printing” to “Only the Joint Committee on Printing has the authority to grant waivers to the printing requirements. All Agency waiver requests must be coordinated with EPA's Headquarters Printing Management Team, Facilities and Services Division, and with the Office of General Counsel.”
3. Paragraph (d)(4) – changed from “the contracting officer must obtain a waiver from the U.S. Congress Joint Committee on Printing” to “Only the Joint Committee on Printing has the authority to grant waivers to the printing requirements. All Agency waiver requests must be coordinated with EPA's Headquarters Printing Management Team, Facilities and Services Division, and with the Office of General Counsel.”
4. Paragraph (d)(4) – duplication limit changed from 100 to 500.
5. Paragraph (d)(4) – examples of non-paper duplication expanded from “CDs/DVDs” to “electronic information storage device.”

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a “significant regulatory action” under the terms of Executive Order (EO)12866 (58 FR 51735, October 4, 1993) and therefore, not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. No information is collected under this action.

C. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory

Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute; unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's final rule on small entities, "small entity" is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action revises a current EPAAR provision and does not impose requirements involving capital investment, implementing procedures, or record keeping. This rule will not have a significant economic impact on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Local, and Tribal governments and the private sector.

This rule contains no Federal mandates (under the regulatory provisions of the Title II of the UMRA) for State, Local, and Tribal governments or the private sector. The rule imposes

no enforceable duty on any State, Local or Tribal governments or the private sector. Thus, the rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and Local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This rule does not have tribal implications as specified in Executive Order 13175.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, entitled “Protection of Children from Environmental Health and Safety Risks” (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be economically significant as defined under Executive Order 12886, and (2) concerns an environmental health or safety risk that may have a proportionate effect on children. This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risks.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This final rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution of Use” (66 FR 28335, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) (15 U.S.C 272 note) of NTTA, Public Law 104-113, directs EPA to use voluntary consensus standards in it’s regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629, Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This rulemaking does not involve human health or environmental effects.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

List of Subjects in 48 CFR Part 1552

Government procurement, Reporting and recordkeeping requirements.

Dated: April 1, 2013.

John R. Bashista,
Director, Office of Acquisition Management.

Therefore, 48 CFR Chapter 15 is amended as set forth below:

PART 1552-SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for part 1552 continues to read as follows:

Authority: 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

2. Revise 1552.208-70 to read as follows:

1552.208-70 Printing.

As prescribed in 1508.870, insert the following clause:

Printing (SEP 2012)

(a) *Definitions.* “Printing” is the process of composition, plate making, presswork, binding and microform; or the end items produced by such processes and equipment. Printing services include newsletter production and periodicals which are prohibited under EPA contracts.

“Composition” applies to the setting of type by hot-metal casting, photo typesetting, or electronic character generating devices for the purpose of producing camera copy, negatives, a plate or image to be used in the production of printing or microform.

“Camera copy” (or “camera-ready copy”) is a final document suitable for printing/duplication.

“Desktop Publishing” is a method of composition using computers with the final output or generation of a camera copy done by a color inkjet or color laser printer. This is not considered “printing.” However, if the output from desktop publishing is being sent to a typesetting device (i.e., Linotronic) with camera copy being produced in either paper or negative format, these services are considered “printing.”

“Microform” is any product produced in a miniaturized image format, for mass or general distribution and as a substitute for conventionally printed material. Microform services are classified as printing services and include microfiche and microfilm. The contractor may make up

to two sets of microform files for archival purposes at the end of the contract period of performance.

“Duplication” means the making of copies on photocopy machines employing electrostatic, thermal, or other processes without using an intermediary such as a negative or plate.

“Requirement” means an individual photocopying task. (There may be multiple requirements under a Work Assignment or Delivery Order. Each requirement would be subject to the duplication limitation of 5,000 copies of one page or 25,000 copies of multiple pages in the aggregate per requirement).

“Incidental” means a draft and/or proofed document (not a final document) that is not prohibited from printing under EPA contracts.

(b) *Prohibition.* (1) The contractor shall not engage in, nor subcontract for, any printing in connection with the performance of work under this contract. Duplication of more than 5,000 copies of one page or more than 25,000 copies of multiple pages in the aggregate per requirement constitutes printing. The intent of the printing limitation is to eliminate duplication of final documents.

(2) In compliance with EPA Order 2200.4a, EPA Publication Review Procedure, the Office of Communications, Education, and Media Relations is responsible for the review of materials generated under a contract published or issued by the Agency under a contract intended for release to the public.

(c) *Affirmative Requirements.* (1) Unless otherwise directed by the contracting officer, the contractor shall use double-sided copying to produce any progress report, draft report or final report.

(2) Unless otherwise directed by the contracting officer, the contractor shall use recycled paper for reports delivered to the Agency which meet the minimum content standards for paper and paper products as set forth in EPA's Web site for the Comprehensive Procurement Guidelines at: <http://www.epa.gov/cpg/>.

(d) *Permitted Contractor Activities.* (1) The prohibitions contained in paragraph (b) do not preclude writing, editing, or preparing manuscript copy, or preparing related illustrative material to a final document (camera-ready copy) using desktop publishing.

(2) The contractor may perform a requirement involving the duplication of less than 5,000 copies of only one page, or less than 25,000 copies of multiple pages in the aggregate, using one color (black), such pages shall not exceed the maximum image size of 10 ¾ by 14 ¼ inches, or 11 by 17 paper stock. Duplication services below these thresholds are not considered printing. If performance of the contract will require duplication in excess of these thresholds, contractors must immediately notify the contracting officer in writing and a waiver must be obtained. Only the Joint Committee on Printing has the authority to grant waivers to the printing requirements. All Agency waiver requests must be coordinated with EPA's Headquarters Printing Management Team,

Facilities and Services Division, and with the Office of General Counsel. Duplication services of “incidentals” in excess of the thresholds are allowable.

(3) The contractor may perform a requirement involving the multi-color duplication of no more than 100 pages in the aggregate using color copier technology, such pages shall not exceed the maximum image size of 10 ³/₄ by 14 ¹/₄ inches, or 11 by 17 paper stock. Duplication services below these thresholds are not considered printing. If performance of the contract will require duplication in excess of these limits, contractors must immediately notify the contracting officer in writing and a waiver must be obtained. Only the Joint Committee on Printing has the authority to grant waivers to the printing requirements. All Agency waiver requests must be coordinated with EPA's Headquarters Printing Management Team, Facilities and Services Division, and with the Office of General Counsel.

(4) The contractor may perform the duplication of no more than a total of 500 units of an electronic information storage device (e.g., CD-ROMs, DVDs, thumb drives¹) (including labeling and packaging) per work assignment or task order/delivery order per contract year. Duplication services below these thresholds are not considered printing. If performance of the contract will require duplication in excess of these thresholds, contractors must immediately notify the contracting officer in writing and a waiver must be obtained. Only the Joint Committee on Printing has the authority to grant waivers to the printing requirements. All Agency waiver requests must be coordinated with EPA's Headquarters Printing Management Team, Facilities and Services Division, and with the Office of General Counsel.

(e) *Violations*. The contractor may not engage in, nor subcontract for, any printing in connection with the performance of work under the contract. The cost of any printing services in violation of this clause will be disallowed, or not accepted by the Government.

(f) *Flowdown Clause*. The contractor shall include in each subcontract which may involve a requirement for any printing/duplicating/copying a provision substantially the same as this clause.

¹Pursuant to the July 2008 guidance *Promotional Communications for EPA*, a thumb drive can be used as a promotional item, but it also must be an information medium in itself. Namely, it must have substantive EPA information already loaded into the drive. Due to its intrinsic material value, it may not be used simply or primarily to display an EPA message on the exterior of the drive.

(End of clause)

